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February 12, 2024

VIA ECF

Honorable Ona T. Wang, U.S.M.J.
United States District Court
Southern District of New York
Daniel Patrick Moynihan Courthouse
500 Pearl Street, Courtroom 20D
New York, New York 10007

Re: Ahmed Ashour, et al. v. Arizona Beverages USA LLC, et al.
Index No. 19-cv-07081 (AT)(OTW)
Joint Letter Attaching Proposed Redactions of ECF No. 283

Dear Judge Wang:

Kindly accept this joint letter to identify the following color codes on the redacted document (ECF No. 283), attached hereto as Exhibit "A", filed under seal, pursuant to the Court's order (ECF No. 308):

Pink: Indicates redactions agreed by the parties; and
Yellow: Indicates redactions requested by defendants, without plaintiffs' consent.

There are no proposed redactions by plaintiffs without defendants' consent.

Thank you for Your Honor's attention to this matter.

Respectfully submitted,

REESE LLP

STEVENS & LEE

/s/ Carlos F. Ramirez
CARLOS F. RAMIREZ
Attorneys for Plaintiffs

/s/ Robert P. Donovan
ROBERT P. DONOVAN
Attorneys for Defendants

Allentown • Bergen County • Bala Cynwyd • Fort Lauderdale • Harrisburg • Lancaster • New York
Philadelphia • Princeton • Reading • Rochester • Scranton • Valley Forge • Wilkes-Barre • Wilmington
A PA Professional Corporation, Salvatore A. Giampiccolo, NJ Managing Attorney

EXHIBIT A

REESE LLP

December 7, 2023

VIA ECF

Honorable Onn T. Wang, U.S.M.J.
United States District Court
Southern District of New York
Daniel Patrick Moynihan Courthouse
500 Pearl Street, Courtroom 20D
New York, New York 10007

Re: *Ashour, et al. v. Arizona Beverages USA LLC, et al.*
Case No.: 1:19-cv-07081-AT-OTW

Dear Judge Wang:

Plaintiffs request a pre-motion conference pursuant to Local Civil Rule 37.2 to discuss the need to bring a motion to compel Defendants to produce information and/or testimony sought pursuant to Plaintiffs' Second Amended Notice of Deposition of Defendants Pursuant to Federal Rule of Civil Procedure 30(b)(6), dated October 30, 2023 (attached hereto as Exhibit 1 (the "Notice")). Specifically, Plaintiffs seek to compel Defendants' answers to questions they were instructed to not answer at a 30(b)(6) deposition held on November 2, 2023, concerning Topic 29 of the Notice (seeking information concerning BSI).

The Parties' Meet and Confer Regarding This Issue Was Not Fruitful

After Defendants' witness was instructed not to answer Plaintiffs' questions, as discussed below, the Parties agreed to call the Court to get a ruling on the issue. The Court was unavailable at that time. A few hours later, the Court issued a ruling that the parties should meet and confer during the lunch break to resolve the dispute. Per the Court's Order, the Parties met and conferred, however, they remained at an impasse. The Parties agreed that Plaintiffs would not continue to pursue the line of questioning Defendants objected to and, to the extent that Plaintiffs wanted to seek that information in the future, Plaintiffs would need to seek a Court Order requiring Defendants to answer said questions.¹ For the reasons given below, a motion to compel would be proper under these circumstances.

Topic 29 (ESI)

It should be noted at the outset that since Defendants' service of their objections and responses to the original 30(b)(6) Notice *over two years ago*, the Parties have had to engage in countless meet and confers on the content of the Notice's Topics, not to mention the countless hours spent litigating the same before this Court. Indeed, even over the course of the last several months, the Parties have had to continue to meet and confer concerning many of the Notice's Topics, including the Topics raised herein.

After numerous meet and confers, Plaintiffs agreed to limit Topic 29 to "the location, storage, maintenance, and/or handling of electronically stored information ('ESI') and any 'backup tape and voicemail

¹ Attached hereto as Exhibit 2 are excerpts of the deposition transcript relating to the Parties' discussions concerning this issue.

systems.”

At the 30(b)(6) deposition, Plaintiffs attempted to ask Defendants’ Topic 29 witness about the location, storage, and maintenance of emails produced by Defendants in this litigation. The line of questioning was necessary because it had come to Plaintiffs’ attention that Defendants had not produced certain relevant emails exchanged between them and one of their suppliers, *Allen Plastics, Inc. (“API”)*. Specifically, an email thread produced by Defendants (attached hereto as Exhibit 3) is missing emails that appear in an email thread produced by *API* (attached hereto as Exhibit 4). Thus, on notice of the glaring discrepancy between Defendants’ email production compared to *API*, Plaintiffs sought to ask questions within the parameters of the agreed upon Topic in order to determine how Defendants could have failed to produce emails clearly responsive to Plaintiffs’ discovery requests. Notably, the documents Defendants failed to produce were unfavorable to Defendants. Had Plaintiffs been allowed to pursue this line of questions, Plaintiffs would have also asked questions in order to determine whether any other responsive documents had not been produced. However, Defendants’ counsel repeatedly instructed the Topic 29 witness to not answer any questions seeking information concerning the missing emails issue because they allegedly went beyond the parameters of the and they purportedly sought “discovery on discovery.” See e.g., Ex. 2 at 51:7-61:13, 87:17-92:6, 110:4-116:22.

Defense counsel’s instructions were improper. Plaintiffs’ line of questioning was clearly within the scope of Topic 29, as agreed upon by the Parties. For example, the information Plaintiffs sought concerned the locations where Defendants store their ESI, including emails. Questions concerning where ESI is located, as well as its storage and maintenance by Defendants, were clearly within the parameters of the agreed upon Topic. Importantly, if Plaintiffs had been allowed to ask these questions, they would have likely elicited testimony about how Defendants had, *in fact*, failed to search certain individual users’ mailbox archives, which is exactly where Defendants later found the missing emails,² which substantiates the need to ensure no additional discovery has been withheld. Moreover, Plaintiffs’ questions would have obviated more needless litigation between the Parties on yet another discovery matter and the draining of additional judicial resources.

But even if the Court were to agree with Defendants’ interpretation that Plaintiffs’ questions were not within the scope of Topic 29, Plaintiffs have established good cause as to why they should be allowed to inquire into Defendants’ failure to produce relevant ESI. In fact, a party seeking this type of information may obtain it if it can show that additional responsive materials exist and were withheld. See *Orillaneda v. French Culinary Inst.*, No. 07-3206, 2011 WL 4375365, at *5-9 (S.D.N.Y. Sept. 19, 2011) (noting that discovery on discovery may be ordered if the compelling party can identify specific deficiencies in the opposing party’s production); *Jensen v. BMW of N. Am., LLC*, 328 F.R.D. 557, 566 (S.D. Cal. 2019) (same).

The email threads at Exhibits 3 and 4 clearly establish that Defendants failed to turn over responsive, highly relevant evidence that Plaintiffs would have never known about had they not subpoenaed a third party. Importantly, this confirms Plaintiffs’ suspicion since early last year that Defendants have not been producing all of the relevant emails responsive to Plaintiffs’ requests. This should come as no surprise to the Court because Plaintiffs have raised this issue on at least ten occasions both in writing and during court conferences. As addressed in a multitude of Joint Status Reports filed in this case, Plaintiffs noted that:

Plaintiffs’ counsel has reviewed these productions in their entirety and continues to be puzzled by how so few particularly relevant emails have been produced, especially given (1) the significant number of custodians’ whose emails are being searched (sixteen different people) and (2) the relatively broad search terms being deployed (e.g., the phrase “No Preservatives” and the terms “preserv*” AND “Ingredient*”). To further illuminate that Plaintiffs are not receiving the type of robust email productions common in class actions against major corporations and to put some metrics on the issue, Plaintiffs have searched the ESI productions to date and report, based

² Letter from Stevens & Leo to Plaintiffs’ counsel concerning production of missing emails, dated November 21, 2023 (attached hereto as Exhibit 5).

on searching metadata who emails are from, the following minimal quantity of emails from key personnel: Don Vultaggio (Chairman): Zero emails from him;³ Spencer Vultaggio (Chief Marketing Officer): 5 emails from him; Wesley Vultaggio (Chief Creative Officer): 2 emails from him; Dean Angel (Director of Program Assurance): 15 emails from him; and Mike Kutner (Vice President of Procurement and Copack Operations): 8 emails from him. There have been a larger number of produced emails to the custodians but, even then, these are often predominantly just mass mailings with little (if any) relevance to the case. Simply put, Defendants have largely not produced the types of standard back-and-forth email correspondence that is common in businesses (especially businesses of the stature of Defendants). *Also, with respect to some emails, the thread is not produced in its entirety and in the order in which the conversation takes place.* Moreover, the authors' responses are interspersed across hundreds of other documents (likely in violation of F.R.C.P. Rule 26(b)(5)(A)) making it extremely difficult for the document reviewer to comprehend the substance of the email conversation.

Joint Status Report, dated April 28, 2023 at p. 2-3, BCF No. 257 (emphasis added); *see also* Joint Stat. Rpt. 2, BCF No. 190; Joint Stat. Rpt. 1, BCF No. 192; Joint Stat. Rpt. 2, BCF No. 195; Joint Stat. Rpt. 2, BCF No. 208, Ltr. Mot. 2, BCF No. 213, Joint Stat. Rpt. 1, BCF No. 227, Joint Stat. Rpt. 2, BCF No. 241, Joint Stat. Rpt. 2, 4, BCF No. 253; Joint Stat. Rpt. 1, BCF No. 273.

In sum, Defendants' 30(b)(6) witness for Topic 29 was improperly instructed to not answer questions meant to probe into the location, storage, and maintenance of BSI as contemplated by the agreed upon Topic. Had Plaintiffs been allowed to do so, Plaintiffs would have identified the fact that Defendants had failed to search certain users' email archives. Those questions would have also helped avoid more needless litigation on discovery matters and the further waste of judicial resources. In addition, Plaintiffs have clearly established that Defendants failed to produce responsive, highly relevant documents, thereby necessitating the need for Plaintiffs to determine whether any other responsive documents have not been produced. Accordingly, Plaintiffs should be allowed to reopen the 30(b)(6) deposition on Topic 29 and Defendants should be ordered to answer Plaintiffs' questions relating to their efforts to identify and collect responsive BSI for production in this matter.

Respectfully submitted,

REESE LLP

By: /s/ Carlos F. Ramirez

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³ While it has been represented to Plaintiffs' counsel on numerous occasions that Mr. Vultaggio does not "use" email, Plaintiffs came across at least one email addressed to him but the email address that it was sent to belonged to another Arizona employee, Jayne Clecone. Thus, while Mr. Vultaggio may not log into an email program and "use" it to read/send emails, he is nevertheless communicating via email. Those emails should be produced forthwith.

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Attorneys for Plaintiffs and the Proposed Class

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Page 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMMED ASHOUR, individually and
on behalf of all others
similarly situated,
Plaintiff,

v.

ARIZONA BEVERAGES USA LLC,
KORNELL BREWING CO., INC.,
BEVERAGE MARKETING USA, INC.,
ARIZONA BEVERAGES HOLDINGS LLC,
and ARIZONA BEVERAGES HOLDINGS
2 LLC,

Defendants.

Index No.

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(AT) (OTW)

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4	TIME: 10:14 a.m.	4	By Mr. Visconti 121
5	LOCATION: Remote Proceeding	5	By Mr. Ramirez 122
6	Arizona Beverages	6	
7	60 Crossways Park Drive West	7	EXHIBITS
8	Suite 400	8	NO. DESCRIPTION PAGE
9	Woodbury, NY 11797	9	Utset:
10	REPORTED BY: Beth Pontano-Howard	10	Exhibit 1 Amended Deposition Notice 12
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1	APPEARANCES	1	G. UTSET
2	ON BEHALF OF PLAINTIFF AHMED ASHOUR, INDIVIDUALLY	2	THE VIDEOGRAPHER: Good morning. We
3	AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED:	3	are going on the record at 10:14 a.m. on
4	CARLOS P. RAMIREZ, ESQUIRE (by videoconference)	4	November 2, 2023. Please note that this
5	Rece LLP	5	deposition is being conducted virtually.
6	100 West 93rd Street, 16th Floor	6	Quality of recording depends on the
7	New York, NY 10025	7	quality of camera and internet connection
8	carlosr@rece-llp.com	8	of participants. What is seen from the
9	(212) 860-4994	9	witness and heard onscreen is what will be
10		10	recorded. Audio and video recording will
11	ON BEHALF OF DEFENDANTS ARIZONA BEVERAGES USA LLC,	11	continue to take place unless all parties
12	HORNBLUM & LEO, INC., BEVERAGE MARKETING USA,	12	agree to go off the record. This is Media
13	INC., ARIZONA BEVERAGES HOLDINGS LLC AND ARIZONA	13	Unit 1 of the video recorded deposition of
14	BEVERAGES HOLDINGS 2 LLC:	14	Gabe Utset taken in the matter of Ahmed
15	JOHN N. VISCONTI, ESQUIRE (by videoconference)	15	Ashour, Individually and on behalf of all
16	Stevens & Leo, P.C.	16	others similarly situated vs. Arizona
17	485 Madison Avenue, 20th Floor	17	Beverages, et al, filed in the United
18	New York, NY 10022	18	States District Court, Southern District
19	john.visconti@stevensleo.com	19	of New York, Case No.
20	(201) 857-6762	20	1:19-cv-07081(AT)(OTW).
21		21	This deposition is being conducted
22	ALSO PRESENT:	22	remotely using virtual technology. My
23	Dowey Nelson, Videographer (by videoconference)	23	name is Dowey Nelson representing Veritext
24		24	and I am the videographer. Court reporter
25		25	is Beth Pontano-Howard from the firm

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<p>1 G. UTSET</p> <p>2 THE VIDEOGRAPHER: We are off the</p> <p>3 record. The time is 11:24 a.m.</p> <p>4 (Off the record.)</p> <p>5 THE VIDEOGRAPHER: We are back on the</p> <p>6 record. The time is 11:26 a.m.</p> <p>7 MR. RAMIREZ: I probably should have</p> <p>8 asked for two questions --</p> <p>9 THE REPORTER: I'm sorry.</p> <p>10 MR. RAMIREZ: -- prior to that, but</p> <p>11 it's my fault.</p> <p>12 BY MR. RAMIREZ:</p> <p>13 Q Let me reask this question,</p> <p>14 Mr. Utset, because I don't recall if I</p> <p>15 asked it or for your answer. Were you</p> <p>16 involved in searching for documents that</p> <p>17 may have been stored on Arizona's servers</p> <p>18 called for by the document request labeled</p> <p>19 as Exhibit 2 that is before you now?</p> <p>20 MR. VISCONI: I'm going to maintain</p> <p>21 the objection, Carlos, in part because if</p> <p>22 you recall there was a extensive meet and</p> <p>23 confer process that led to search terms,</p> <p>24 So I don't know if -- even if what he did</p> <p>25 is not privileged, and I'm not ready to</p>	<p>1 G. UTSET</p> <p>2 A No.</p> <p>3 Q Moving on from searching, were</p> <p>4 you involved in the assembly of documents</p> <p>5 that would have been -- I'm going to</p> <p>6 withdraw that. I think I need to</p> <p>7 understand the process. After your search</p> <p>8 of documents pursuant to the request that</p> <p>9 is in front of you, what, if anything, did</p> <p>10 you do with the search results?</p> <p>11 MR. VISCONI: Objection.</p> <p>12 Go ahead.</p> <p>13 THE WITNESS: As -- as John mentioned</p> <p>14 earlier, I'm not sure that I did anything</p> <p>15 pursuant to that document that you have up</p> <p>16 currently. That being said, there were</p> <p>17 obviously searches that were performed and</p> <p>18 the results of those searches were then</p> <p>19 passed on to an internal counsel employee</p> <p>20 for purposes that are not entirely --</p> <p>21 MR. VISCONI: No, I'm going to stop</p> <p>22 him. I'm going to stop him right there.</p> <p>23 I'm going to stop him right there.</p> <p>24 MR. RAMIREZ: That's fine. That's</p> <p>25 fine. That's fine, John.</p>
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<p>1 G. UTSET</p> <p>2 concede that yet, but it may not have been</p> <p>3 pursuant to this document per se.</p> <p>4 MR. RAMIREZ: All right. Let me</p> <p>5 rephrase that.</p> <p>6 BY MR. RAMIREZ:</p> <p>7 Q Were you involved in the</p> <p>8 collection of -- withdrawn. Were you</p> <p>9 involved in the search for documents that</p> <p>10 would have been stored on Arizona's</p> <p>11 servers called for in connection with this</p> <p>12 litigation?</p> <p>13 MR. VISCONI: Objection.</p> <p>14 Go ahead. You can answer if you can.</p> <p>15 THE WITNESS: Yes.</p> <p>16 BY MR. RAMIREZ:</p> <p>17 Q Were any other people involved</p> <p>18 in that same task at your company?</p> <p>19 MR. VISCONI: Objection.</p> <p>20 Go ahead.</p> <p>21 THE WITNESS: Do you define involved</p> <p>22 as the task of searching?</p> <p>23 BY MR. RAMIREZ:</p> <p>24 Q Yes. And we'll take it in two</p> <p>25 steps. Let's talk about searching.</p>	<p>1 G. UTSET</p> <p>2 BY MR. RAMIREZ:</p> <p>3 Q At whose direction, again,</p> <p>4 without telling me the substance of any</p> <p>5 lawyers, not non-lawyers, any lawyers, did</p> <p>6 you perform the searches that's relating</p> <p>7 to the document request before you?</p> <p>8 MR. VISCONI: I'm objecting to this.</p> <p>9 And Carlos, I just -- topic 29 is</p> <p>10 about what the ESI universe at the company</p> <p>11 looks like. It is not a request for</p> <p>12 discovery about discovery. To get</p> <p>13 discovery about discovery, you have to</p> <p>14 file a formal motion and make certain</p> <p>15 levels of proof to the court and have a</p> <p>16 court order permitting you to receive</p> <p>17 discovery about discovery. We don't have</p> <p>18 that in this case. Mr. Utset is here to</p> <p>19 testify about the universe of systems and</p> <p>20 how ESI is stored and maintained. He is</p> <p>21 not here to testify about what steps were</p> <p>22 undertaken to provide documents in this</p> <p>23 case. He's not here to testify about the</p> <p>24 process of discovery. He can give you the</p> <p>25 roadmap for all of the systems that</p>

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<p>1 G. UTSET</p> <p>2 Arizona has and he could tell you what</p> <p>3 would be on those systems, but this not</p> <p>4 about how discovery was obtained in this</p> <p>5 case. You have to file a motion with the</p> <p>6 court to get that.</p> <p>7 MR. RAMIREZ: I'm unaware of the rule</p> <p>8 that requires that. That being said, I am</p> <p>9 allowed to go into how discovery was, as I</p> <p>10 said, handled. Which is part of the --</p> <p>11 the topic. And that includes how</p> <p>12 discovery was gathered. That is the point</p> <p>13 of this 30(b)(6), John, to confirm that</p> <p>14 everything was done as required by the</p> <p>15 rules to obtain a discovery that we are</p> <p>16 allowed to get under Rule 26.</p> <p>17 MR. VISCONI: No, I disagree. You</p> <p>18 have to make an affirmative showing that</p> <p>19 you have reasonably grounded concerns of</p> <p>20 discovery misconduct and a judge has to</p> <p>21 find that that's the case. And if we have</p> <p>22 to get on the phone with Judge Wang today,</p> <p>23 that's what we're going to have to do.</p> <p>24 But this is not discovery about discovery.</p> <p>25 You have not made the proper proofs and</p>	<p>1 how discovery was gathered and handled?</p> <p>2 Because the topic is clear that that's</p> <p>3 part of --</p> <p>4 MR. VISCONI: No, it's not. First of</p> <p>5 all, no, it's not.</p> <p>6 MR. RAMIREZ: Yeah. It is.</p> <p>7 MR. VISCONI: The part that you read</p> <p>8 about "communications concerning the</p> <p>9 claims raised in the motions" which is</p> <p>10 where you stopped, is not part of the</p> <p>11 agreed upon topic. The agreed upon topic</p> <p>12 is strictly after "as confirmed during the</p> <p>13 meet and confer process." So this is</p> <p>14 pursuant to Rule 26. There is a bevy of</p> <p>15 case law on it. I don't have a case</p> <p>16 citation as I sit here, but I certainly</p> <p>17 can and can provide that to you, but you</p> <p>18 need to file a motion with the court if</p> <p>19 you want discovery on discovery. And you</p> <p>20 haven't done that.</p> <p>21 MR. RAMIREZ: John, this is not</p> <p>22 discovery on discovery. You keep calling</p> <p>23 it that. It's not. Let me read to you</p> <p>24 again the topic that we agreed on. "As</p>
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<p>1 G. UTSET</p> <p>2 gotten a court order to do that.</p> <p>3 MR. RAMIREZ: Well, we do have proof</p> <p>4 which is the fact that certain emails</p> <p>5 weren't produced in totality that in fact</p> <p>6 contain other longer threads as produced</p> <p>7 by third-parties. That being said, I am</p> <p>8 not familiar, if you could please cite me</p> <p>9 the rule, the case that will not allow me</p> <p>10 to go into how discovery was gathered</p> <p>11 when, in fact, we do have proof that</p> <p>12 certain discovery was not produced. If</p> <p>13 you want to get Judge Wang on this, on the</p> <p>14 phone for this particular issue, I'm happy</p> <p>15 to because this one is like -- this is a</p> <p>16 non-starter. This is certainly things</p> <p>17 that we are entitled to go into.</p> <p>18 MR. VISCONI: And we can do that, but</p> <p>19 you say you have proof, but you have not</p> <p>20 filed a motion and a court has not</p> <p>21 authorized you to conduct discovery on</p> <p>22 discovery which is what's required.</p> <p>23 MR. RAMIREZ: Can you please cite --</p> <p>24 sorry. Can you please cite to me the rule</p> <p>25 that says that I'm not allowed to go into</p>	<p>1 G. UTSET</p> <p>2 confirmed during the meet and confer</p> <p>3 process, defendants agreed to designate a</p> <p>4 witness regarding the location, storage,</p> <p>5 maintenance and/or handling, handling</p> <p>6 means pulling it, searching for it,</p> <p>7 producing it. That is what handling</p> <p>8 means, John.</p> <p>9 MR. VISCONI: No, we disagree with</p> <p>10 that. That is not --</p> <p>11 MR. RAMIREZ: If you want to lose</p> <p>12 this one in front of the judge, if you</p> <p>13 want to fight on this and lose this</p> <p>14 matter, this issue, then I'm happy to do</p> <p>15 that.</p> <p>16 MR. VISCONI: Let's do that then.</p> <p>17 MR. RAMIREZ: You want to call it</p> <p>18 discovery on discovery because that helps</p> <p>19 your position, but it is not discovery on</p> <p>20 discovery. It is how the discovery was</p> <p>21 handled. What do you think handling means</p> <p>22 in this sentence?</p> <p>23 MR. VISCONI: I think how the company</p> <p>24 handles its BSI generally, not as it</p> <p>25 relates to this case.</p>

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<p>1 G. UTSET</p> <p>2 MR. RAMIREZ: What's the point of a</p> <p>3 30(b)(6) If we can't establish that the</p> <p>4 company didn't do their due diligence and</p> <p>5 they didn't abide by the discovery laws?</p> <p>6 MR. VISCONI: Again, Carlos, that is</p> <p>7 called discovery about discovery and I</p> <p>8 don't know how many times I can say it,</p> <p>9 but you need authority from the court to</p> <p>10 get that.</p> <p>11 MR. RAMIREZ: Okay. So are you</p> <p>12 instructing your witness to not answer</p> <p>13 that question?</p> <p>14 MR. VISCONI: I'm saying let's get on</p> <p>15 the phone with Judge Wang and see if you</p> <p>16 have permission to obtain discovery about</p> <p>17 discovery.</p> <p>18 MR. RAMIREZ: Okay, let's do it.</p> <p>19 Let's do it.</p> <p>20 MR. VISCONI: Okay.</p> <p>21 THE VIDEOGRAPHER: Are we going off</p> <p>22 the record?</p> <p>23 MR. VISCONI: Yeah, I think we're</p> <p>24 going to have to.</p> <p>25 THE VIDEOGRAPHER: All right. We are</p>	<p>1 G. UTSET</p> <p>2 I think, again, this is going to go</p> <p>3 into work product privilege and again,</p> <p>4 this is discovery on discovery. This is</p> <p>5 not what he's here to testify about.</p> <p>6 MR. RAMIREZ: Are you directing him</p> <p>7 to not answer, John?</p> <p>8 MR. VISCONI: Well, I am because I</p> <p>9 think it goes into work product.</p> <p>10 MR. RAMIREZ: If he's not revealing</p> <p>11 the substance of whatever -- withdrawn.</p> <p>12 It can't be work product 'cause you</p> <p>13 produced it. I mean, these are documents</p> <p>14 that were produced. I'm not asking him to</p> <p>15 testify on documents that are logged on</p> <p>16 the privilege log.</p> <p>17 MR. VISCONI: No, you're asking him</p> <p>18 about the procedure he underwent to obtain</p> <p>19 documents.</p> <p>20 MR. RAMIREZ: And I got to confirm</p> <p>21 whether or not he performed the searches</p> <p>22 properly in order to confirm that we've</p> <p>23 received all of the documents that are</p> <p>24 responsive to plaintiff's request.</p> <p>25 MR. VISCONI: Assuming you have</p>
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<p>1 G. UTSET</p> <p>2 off the record. The time is 11:36 a.m.</p> <p>3 (Off the record.)</p> <p>4 THE VIDEOGRAPHER: We are back on the</p> <p>5 record. The time is 11:39 a.m.</p> <p>6 BY MR. RAMIREZ:</p> <p>7 Q Mr. Utset, were you ever</p> <p>8 provided with a list of search terms to</p> <p>9 use in connection with your search of</p> <p>10 documents in connection with this</p> <p>11 litigation?</p> <p>12 A Yes.</p> <p>13 Q Without telling me the substance</p> <p>14 of any conversations you may have had with</p> <p>15 your attorneys about this, who provided</p> <p>16 you with that list of search terms?</p> <p>17 MR. VISCONI: Objection.</p> <p>18 THE WITNESS: Internal --</p> <p>19 Sorry.</p> <p>20 Internal counsel.</p> <p>21 BY MR. RAMIREZ:</p> <p>22 Q And upon receipt of that list of</p> <p>23 search terms, what, if anything, did you</p> <p>24 do?</p> <p>25 MR. VISCONI: Objection.</p>	<p>1 G. UTSET</p> <p>2 authority to ask discovery about the</p> <p>3 discovery process which again is what is</p> <p>4 pending before the Judge, Carlos. That's</p> <p>5 what we need Judge Wang to rule on.</p> <p>6 MR. RAMIREZ: Okay. That's fine.</p> <p>7 But the point of a 30(b)(6) is for us to</p> <p>8 confirm that all steps were taken in order</p> <p>9 for plaintiffs to confirm that they</p> <p>10 received the relevant and responsive</p> <p>11 documents pursuant to their request.</p> <p>12 Okay, so we'll table that until we hear</p> <p>13 back from the judge.</p> <p>14 BY MR. RAMIREZ:</p> <p>15 Q Okay. Let's talk about the</p> <p>16 infrastructure, Mr. Utset, as far as IT is</p> <p>17 concerned. You mentioned earlier that</p> <p>18 there are multiple locations -- withdrawn.</p> <p>19 You mentioned earlier that Arizona has</p> <p>20 locations throughout the country. You</p> <p>21 mentioned New York, New Jersey,</p> <p>22 Pennsylvania, California. Do each of</p> <p>23 those locations house their own servers</p> <p>24 that store documents and emails?</p> <p>25 A No.</p>

16 (Pages 58 - 61)

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<p>1 G. UTSET</p> <p>2 email up from that one. It's sent</p> <p>3 Thursday, August 6, 2015, 12:26. I</p> <p>4 believe you recognize all of those --</p> <p>5 withdrawn. Looking at that email, do you</p> <p>6 know who Allen Flavors is, Mr. Utset?</p> <p>7 MR. VISCONI: Objection.</p> <p>8 THE REPORTER: Spell the name,</p> <p>9 please?</p> <p>10 MR. RAMIREZ: Allen Flavors,</p> <p>11 A-J-L-E-N Flavors.</p> <p>12 MR. VISCONI: My objection's on the</p> <p>13 record. None of this is related to topic</p> <p>14 29, but he can answer it, he can answer</p> <p>15 it.</p> <p>16 THE WITNESS: I cannot provide an</p> <p>17 accurate description to what Allen Flavors</p> <p>18 is.</p> <p>19 BY MR. RAMIREZ:</p> <p>20 Q Have you seen the name before?</p> <p>21 MR. VISCONI: Objection.</p> <p>22 A I have seen the name before.</p> <p>23 MR. RAMIREZ: And John, just so you</p> <p>24 know, this is related -- if you could just</p> <p>25 give me some latitude, although obviously</p>	<p>1 G. UTSET</p> <p>2 entitled to show that there are gaps in</p> <p>3 the production and that certain documents</p> <p>4 that should have been produced by Arizona</p> <p>5 were not, in fact, produced. I will,</p> <p>6 after this, discuss an email that shows</p> <p>7 the entire thread that occurred between</p> <p>8 the parties that day which Arizona did not</p> <p>9 produce.</p> <p>10 MR. VISCONI: And Carlos, this</p> <p>11 witness is here to testify about the</p> <p>12 storage of electronically stored</p> <p>13 information, not a particular email and</p> <p>14 what he thinks it is.</p> <p>15 MR. RAMIREZ: It doesn't matter what</p> <p>16 he thinks it is, John. The point is that</p> <p>17 Mr. Utset was charged with searching</p> <p>18 documents responsive to plaintiff's</p> <p>19 document request and to the extent that</p> <p>20 certain documents were not produced, that</p> <p>21 were produced by a third-party. As you</p> <p>22 said earlier, we're allowed to show this</p> <p>23 to the Court in our motion to ask</p> <p>24 questions about the document searching</p> <p>25 protocol that the company undertook.</p>
Page 87	Page 89
<p>1 G. UTSET</p> <p>2 you're welcome to put the objection.</p> <p>3 MR. VISCONI: I'm going to continue</p> <p>4 to object, but in the spirit of the</p> <p>5 holiday season I'll let you keep going.</p> <p>6 MR. RAMIREZ: Thank you. You're a</p> <p>7 good man.</p> <p>8 BY MR. RAMIREZ:</p> <p>9 Q And you see that the last email</p> <p>10 is from Jay Petrucci to Jim Dar sent</p> <p>11 Thursday, August 6, 2015, at 5:04 p.m.?</p> <p>12 MR. VISCONI: Objection.</p> <p>13 Go ahead.</p> <p>14 THE WITNESS: I see that email at the</p> <p>15 top.</p> <p>16 BY MR. RAMIREZ:</p> <p>17 Q And Mr. Utset, can you please,</p> <p>18 to the extent you can, describe what this</p> <p>19 document is?</p> <p>20 MR. VISCONI: Objection.</p> <p>21 No. That's so far outside the scope,</p> <p>22 Carlos.</p> <p>23 MR. RAMIREZ: Okay. Let me make the</p> <p>24 record. John, per your own comment</p> <p>25 earlier -- no, your argument, we are</p>	<p>1 G. UTSET</p> <p>2 MR. VISCONI: Right. But the</p> <p>3 questions you're asking are supposed to be</p> <p>4 the questions that come after the Court</p> <p>5 grants a motion, not before it. This is a</p> <p>6 document that -- hang on. This is a DEBI</p> <p>7 document. This is one that Arizona</p> <p>8 produced. We'll stipulate to that.</p> <p>9 MR. RAMIREZ: John, to the extent</p> <p>10 that Mr. Utset is here to talk about the</p> <p>11 handling and the searching of documents,</p> <p>12 we are allowed to go into that exercise</p> <p>13 and we're allowed to make a record as you</p> <p>14 demanded earlier. So for you to tell us</p> <p>15 that we can't establish -- you said</p> <p>16 yourself, you have to show that there was</p> <p>17 an issue, that there was some kind of</p> <p>18 malfeasance and now you're telling me that</p> <p>19 I can't establish that? How am I supposed</p> <p>20 to establish it if not --</p> <p>21 MR. VISCONI: Carlos, I'm telling you</p> <p>22 these questions are inappropriate and I'm</p> <p>23 going to direct him not to answer until we</p> <p>24 can get the Court on the phone.</p> <p>25 MR. RAMIREZ: You really want to do</p>

23 (Pages 86 - 89)

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<p>1 G. UTSET</p> <p>2 that?</p> <p>3 MR. VISCONI: I really do because it</p> <p>4 seems that we are sincerely at an impasse</p> <p>5 here.</p> <p>6 MR. RAMIREZ: So, John, how do you</p> <p>7 expect for us to establish the record that</p> <p>8 you yourself said is what we need to</p> <p>9 establish to litigate my potential</p> <p>10 motion? Which I'm not --</p> <p>11 MR. VISCONI: Carlos, you've already</p> <p>12 got documents in your mind demonstrate</p> <p>13 that we were deficient in our production.</p> <p>14 Show that to the Court and see if she</p> <p>15 agrees.</p> <p>16 MR. RAMIREZ: Oh, I think she will</p> <p>17 agree for sure.</p> <p>18 MR. VISCONI: I'm happy to litigate</p> <p>19 that.</p> <p>20 MR. RAMIREZ: Okay. So are we. But</p> <p>21 to the extent that we have a witness here</p> <p>22 that was supposed to be prepared to</p> <p>23 testify about documents produced in this</p> <p>24 litigation and the --</p> <p>25 MR. VISCONI: I disagree with that.</p>	<p>1 G. UTSET</p> <p>2 MR. VISCONI: To not answer the</p> <p>3 question about this document, yes.</p> <p>4 MR. RAMIREZ: That's your position.</p> <p>5 Okay.</p> <p>6 MR. VISCONI: Yes.</p> <p>7 BY MR. RAMIREZ:</p> <p>8 Q Mr. Utset, can you please take a</p> <p>9 look at what has been marked as Utset</p> <p>10 Exhibit No. 4?</p> <p>11 A Can you please confirm which</p> <p>12 document that was?</p> <p>13 Q Oh, sure. It's the one that's</p> <p>14 labeled AFI 000 2003.</p> <p>15 A Thank you. Okay.</p> <p>16 Q I'm going to direct your</p> <p>17 attention to the Bates number and that's</p> <p>18 at the bottom right-hand corner, ending in</p> <p>19 2006.</p> <p>20 A Okay.</p> <p>21 Q At the very top, you see there's</p> <p>22 an email? It says, "To Jim Dar." Do you</p> <p>23 see that?</p> <p>24 A I do see that.</p> <p>25 MR. VISCONI: Objection.</p>
Page 91	Page 93
<p>1 G. UTSET</p> <p>2 MR. RAMIREZ: -- of that, John,</p> <p>3 should I read into the record one more</p> <p>4 time what this topic is about?</p> <p>5 MR. VISCONI: You can, but it's not</p> <p>6 going to do anything, Carlos.</p> <p>7 MR. RAMIREZ: No, but you don't get</p> <p>8 to decide what happens and what doesn't</p> <p>9 happen. If you're telling me that you're</p> <p>10 having him not testify based on your</p> <p>11 biased reading of the topic, I don't think</p> <p>12 that's going to go over very well with the</p> <p>13 judge. Effectively, you're making a</p> <p>14 relevance argument which you know you're</p> <p>15 not allowed to make at a 30(b)(6)</p> <p>16 deposition or any deposition for that</p> <p>17 matter.</p> <p>18 MR. VISCONI: And unfortunately,</p> <p>19 you're asking a line of questions that</p> <p>20 require prior court order based on good</p> <p>21 cause to ask. And you don't have that.</p> <p>22 MR. RAMIREZ: So you're directing</p> <p>23 your client -- excuse me. You're</p> <p>24 directing your 30(b)(6) witness to not</p> <p>25 answer this question.</p>	<p>1 G. UTSET</p> <p>2 Sorry. Go ahead. ..</p> <p>3 BY MR. RAMIREZ:</p> <p>4 Q And CC'd is Jay Petragumil. Do</p> <p>5 you see that?</p> <p>6 MR. VISCONI: Objection.</p> <p>7 Go ahead.</p> <p>8 THE WITNESS: Yes. I do.</p> <p>9 BY MR. RAMIREZ:</p> <p>10 Q Okay. Going up to the next</p> <p>11 email which is dated August 4, 2015, 11:36</p> <p>12 a.m. Do you see where it says, "From Jim</p> <p>13 Dar?"</p> <p>14 MR. VISCONI: Objection.</p> <p>15 Go ahead.</p> <p>16 THE WITNESS: Yes. I do.</p> <p>17 BY MR. RAMIREZ:</p> <p>18 Q There are several other people</p> <p>19 in the to and CC lines. Do you recognize</p> <p>20 any of those names?</p> <p>21 MR. VISCONI: Objection.</p> <p>22 Go ahead.</p> <p>23 THE WITNESS: I do not recognize any</p> <p>24 of those names.</p> <p>25 //</p>

24 (Pages 90 - 93)

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<p style="text-align: right;">Page 110</p> <p>1 G. UTSET</p> <p>2 questioning that you objected to.</p> <p>3 BY MR. RAMIREZ:</p> <p>4 Q Mr. Utset, you testified earlier</p> <p>5 that you engaged in a search for documents</p> <p>6 in connection with this litigation.</p> <p>7 MR. VISCONI: Objection.</p> <p>8 Go ahead.</p> <p>9 THE WITNESS: Yes.</p> <p>10 BY MR. RAMIREZ:</p> <p>11 Q Without telling me the substance</p> <p>12 of any communications that you may have</p> <p>13 had with your attorneys, both in-house and</p> <p>14 outside counsel, were you provided with</p> <p>15 search terms in order to engage in your</p> <p>16 search?</p> <p>17 MR. VISCONI: Objection.</p> <p>18 This is discovery on discovery. But</p> <p>19 assuming there's only a couple questions</p> <p>20 here I'll --</p> <p>21 MR. RAMIREZ: Just a couple.</p> <p>22 MR. VISCONI: -- allow him to answer,</p> <p>23 but I maintain the objection.</p> <p>24 MR. RAMIREZ: Thank you, John.</p> <p>25 THE WITNESS: Yes.</p>	<p style="text-align: right;">Page 112</p> <p>1 G. UTSET</p> <p>2 can answer it, my objection's on the</p> <p>3 record.</p> <p>4 THE WITNESS: I cannot give you an</p> <p>5 accurate amount of time that I spent on</p> <p>6 the search.</p> <p>7 BY MR. RAMIREZ:</p> <p>8 Q Can you give me a ballpark?</p> <p>9 MR. VISCONI: Objection.</p> <p>10 Go ahead.</p> <p>11 THE WITNESS: I can't even give you a</p> <p>12 ballpark with any amount of certainty. It</p> <p>13 would be too a guess in the wind. I don't</p> <p>14 feel comfortable giving you that.</p> <p>15 BY MR. RAMIREZ:</p> <p>16 Q Okay. That's fine. During your</p> <p>17 search, did you ever come across any</p> <p>18 documents that appear to be consumer</p> <p>19 surveys of Arizona products?</p> <p>20 MR. VISCONI: Objection.</p> <p>21 A I do not know.</p> <p>22 Q Do you not recall or do you --</p> <p>23 do you not recall? Is that your answer?</p> <p>24 A I do not recall.</p> <p>25 Q Okay. To the extent that any</p>
<p style="text-align: right;">Page 111</p> <p>1 G. UTSET</p> <p>2 BY MR. RAMIREZ:</p> <p>3 Q And did you use those terms to</p> <p>4 conduct your search for documents in this</p> <p>5 case?</p> <p>6 MR. VISCONI: Objection.</p> <p>7 A Yes.</p> <p>8 Q Can you please tell us the --</p> <p>9 withdrawn. How much did you spend in</p> <p>10 searching for the documents in connection</p> <p>11 with the production made in this case?</p> <p>12 MR. VISCONI: Objection.</p> <p>13 And Carlos, in addition to being very</p> <p>14 obviously discovery about discovery, I</p> <p>15 think this question is harder to answer</p> <p>16 than you may think. I mean, we have been</p> <p>17 involved in this process for several</p> <p>18 years, you know, without even the witness</p> <p>19 saying that there have been multiple</p> <p>20 searches of many different locations. So</p> <p>21 I don't think it's a fair question to ask</p> <p>22 how much time he's spent on "the search."</p> <p>23 I maintain my objection that this is out</p> <p>24 of bounds and you would need a court order</p> <p>25 for this. But to the extent the witness</p>	<p style="text-align: right;">Page 113</p> <p>1 G. UTSET</p> <p>2 customer surveys would have been conducted</p> <p>3 by Arizona concerning the products,</p> <p>4 particularly the ready to drink products,</p> <p>5 who would be the person that would be in</p> <p>6 charge of storing those on their computer</p> <p>7 or servers?</p> <p>8 MR. VISCONI: Objection.</p> <p>9 If you can answer, go ahead.</p> <p>10 THE WITNESS: I do not know.</p> <p>11 BY MR. RAMIREZ:</p> <p>12 Q After you completed your search</p> <p>13 of documents, in what form did you hand</p> <p>14 those over to your attorneys? Without</p> <p>15 telling me what conversations you may have</p> <p>16 had.</p> <p>17 MR. VISCONI: Now, I'm objecting and</p> <p>18 I'm shutting that down, Carlos. We're not</p> <p>19 going there.</p> <p>20 MR. RAMIREZ: So just to be clear,</p> <p>21 shutting down means you're instructing</p> <p>22 your client to not answer the question.</p> <p>23 MR. VISCONI: Yes. Pursuant to your</p> <p>24 agreement to withdraw line of questioning</p> <p>25 about discovery about discovery.</p>

29 (Pages 110 - 113)

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<p>1 G. UTSET</p> <p>2 MR. RAMIREZ: I understand, John. As</p> <p>3 I said, I'm still a little vague on the</p> <p>4 concept, but that's fair.</p> <p>5 BY MR. RAMIREZ:</p> <p>6 Q These are some clean-up</p> <p>7 questions. I'm not trying to ask you</p> <p>8 questions you've already given answers to.</p> <p>9 I believe you testified that you didn't</p> <p>10 know whether the formula was stored in</p> <p>11 paper form or on electronic form. Is my</p> <p>12 recollection correct?</p> <p>13 MR. VISCONI: Objection.</p> <p>14 Go ahead.</p> <p>15 THE WITNESS: My recollection is that</p> <p>16 your recollection is correct.</p> <p>17 BY MR. RAMIREZ:</p> <p>18 Q Great. I like that. I like</p> <p>19 that answer. In connection with your</p> <p>20 searches -- I shouldn't say plural but --</p> <p>21 in connection with your search for</p> <p>22 documents in connection with this case,</p> <p>23 did you ever speak to Don Vultaggio [ph]?</p> <p>24 MR. VISCONI: Objection.</p> <p>25 This is discovery on discovery,</p>	<p>1 G. UTSET</p> <p>2 And I'm directing him not to answer</p> <p>3 about discovery on discovery.</p> <p>4 Go ahead.</p> <p>5 THE REPORTER: Would you give me the</p> <p>6 name again? The first name is Spencer did</p> <p>7 you say?</p> <p>8 MR. RAMIREZ: Yes, Spencer. Yes,</p> <p>9 Spencer Vultaggio, V-U-L-T-A-G-G-I-O, I</p> <p>10 will give you the names going forward.</p> <p>11 Apologies.</p> <p>12 THE REPORTER: Thank you.</p> <p>13 BY MR. RAMIREZ:</p> <p>14 Q Same question, Mr. Utset, for</p> <p>15 Wesley Vultaggio, W-E-S-L-E-Y, Vultaggio,</p> <p>16 V-U-L-T-A-G-G-I-O.</p> <p>17 MR. VISCONI: And same objection.</p> <p>18 And I'm instructing him not to</p> <p>19 answer.</p> <p>20 MR. RAMIREZ: We're almost done here.</p> <p>21 I just need to confirm I have everything</p> <p>22 that I need.</p> <p>23 BY MR. RAMIREZ:</p> <p>24 Q In general, do you ever speak to</p> <p>25 Mr. Vultaggio? Excuse me. In general, do</p>
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<p>1 G. UTSET</p> <p>2 Carlos.</p> <p>3 THE REPORTER: Did not get that name,</p> <p>4 Don [ph] -- I don't have that name.</p> <p>5 MR. RAMIREZ: Vultaggio.</p> <p>6 THE REPORTER: Could --</p> <p>7 MR. RAMIREZ: Yes. V as in Victor,</p> <p>8 U-L-T-A-G-G-I-O.</p> <p>9 I understand your objection, John.</p> <p>10 I'm going to ask the questions. Your</p> <p>11 objection, you can keep making it, but I</p> <p>12 have to get a record if we're going to</p> <p>13 pursue this motion.</p> <p>14 MR. VISCONI: That's fine. I'm</p> <p>15 objecting and saying --</p> <p>16 MR. RAMIREZ: Okay. So you're</p> <p>17 directing your client to not answer, fine.</p> <p>18 MR. VISCONI: I am. At this time.</p> <p>19 MR. RAMIREZ: Okay.</p> <p>20 BY MR. RAMIREZ:</p> <p>21 Q Did you, Mr. Utset, speak to</p> <p>22 Spencer Vultaggio in connection with the</p> <p>23 services that you performed for purposes</p> <p>24 of producing documents in this case?</p> <p>25 MR. VISCONI: Same objection.</p>	<p>1 G. UTSET</p> <p>2 you ever speak to Don Vultaggio [ph]?</p> <p>3 MR. VISCONI: Objection. Outside the</p> <p>4 scope.</p> <p>5 But go ahead if you can answer it.</p> <p>6 THE WITNESS: Very rarely.</p> <p>7 BY MR. RAMIREZ:</p> <p>8 Q What would typically a</p> <p>9 conversation be about?</p> <p>10 MR. VISCONI: Same objection.</p> <p>11 A Less of a conversation and more</p> <p>12 of a greeting in passing in the hallway.</p> <p>13 "Hi, Don [ph]. Good morning."</p> <p>14 Q Two more questions. Just going</p> <p>15 back to your testimony earlier and again,</p> <p>16 I don't want to reask you questions. I</p> <p>17 just want to make sure I hit everything</p> <p>18 before we're done. Other than meeting</p> <p>19 Mr. Visconi for purposes of preparing for</p> <p>20 this deposition, did you meet with anyone</p> <p>21 else? I don't want to know the substance</p> <p>22 if it was a lawyer.</p> <p>23 A I had another prep that involved</p> <p>24 another lawyer.</p> <p>25 Q When did that occur?</p>

30 (Pages 114 - 117)

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From: Jay Petragnan
Sent: Thursday, August 6, 2015 5:04 PM EDT
To: Jim Dar
Subject: RE: Arizona New Flavor Fruit Drink Label Issues

Thanks,
Jay

From: Jim Dar
Sent: Thursday, August 06, 2015 12:26 PM
To: Jay Petragnan; Frank ~~De Corso~~; Julie Brenner
Subject: RE: Arizona New Flavor Fruit Drink Label Issues

I just send response from ~~Allen Flavors~~ to Mervyn of ~~Knouse Foods~~.

Thanks

Jim

From: Jay Petragnan
Sent: Thursday, August 06, 2015 9:23 AM
To: Frank ~~De Corso~~; Julie Brenner; Jim Dar
Subject: FW: Arizona New Flavor Fruit Drink Label Issues

Please read below and advise.

Thanks,
Jay

From: Hefe, Greg (<mailto:greg@knouse.com>)
Sent: Thursday, August 06, 2015 9:15 AM
To: Barry Jacobs; Jay Petragnan
Cc: DSouza, Mervyn
Subject: FW: Arizona New Flavor Fruit Drink Label Issues

Per Mervyn's note below, I can not pack until we get these issues resolved (highlighted below). On the schedule to run next week at PP. Help! Thx Greg

From: DSouza, Mervyn
Sent: Thursday, August 06, 2015 8:27 AM
To: Hefe, Greg (<mailto:greg@knouse.com>)
Subject: FW: Arizona New Flavor Fruit Drink Label Issues

Greg, not sure when you are planning to run these items. We should not pack till this is resolved. Thx

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From: Jim Dar [mailto:ldar@drinkarizona.com]
Sent: Monday, August 03, 2015 9:38 PM
To: D Souza, Mervyn <M.DSouza@knouse.com>
Cc: Hofe, Greg <G.Hofe@knouse.com>; Jay Petragnanl <jpetragnanl@drinkarizona.com>
Subject: RE: Arizona New Flavor Fruit Drink Label Issues

Mervyn

I need to find out.

Thanks

Jim

From: D Souza, Mervyn [mailto:M.DSouza@knouse.com]
Sent: Monday, August 03, 2015 3:17 PM
To: Jim Dar
Cc: Hofe, Greg; Jay Petragnanl
Subject: FW: Arizona New Flavor Fruit Drink Label Issues
Importance: High

Hi Jim, would you please review the comments below and advise how to resolve.
Thanks in advance,
--Mervyn

From: Cafarella, John
Sent: Monday, August 03, 2015 9:43 AM
To: D Souza, Mervyn <M.DSouza@knouse.com>
Cc: Wilkinson, Sue <SWilkinson@knouse.com>
Subject: Arizona New Flavor Fruit Drink Label Issues
Importance: High

Mervyn,
As we discussed, Sue and I were reviewing the documentation I need on the new bases for the 3 New
gallon Arizona Fruit Drinks and discovered the following discrepancies:

The bases have listed several ingredients that are not listed on the label.

- 1) Kiwi Strawberry Fruit Juice Cocktail:
1) Fruit Juice for color
2) Glycerol ester of wood rosin
3) Potassium Sorbate
4) Sodium Benzoate

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Orangeade fruit juice cocktail

- 1) Sugar
- 2) Glycerol ester of wood rosin
- 3) Potassium Sorbate

Grapeade Fruit Juice cocktail

- 1) Fruit Juice for color
- 2) Caramel color

These labels and cartons also state 100% natural, No Preservatives, No Artificial color, No artificial flavor.

From our understanding, the base ingredients:

- 1) must be on the label
- 2) the preservatives would not be allowed regardless of the level in the finished product to meet the No preservative claim

John P. [REDACTED]
Manager of Technical Specifications
E-mail: [REDACTED]
Ph. 741.071.8111 ext 4632
Kendall [REDACTED]
63 East Main Street
Birmingham, AL 35207

Arizona News Press
One Arizona Plaza Suite 600 Westbury, NY 11791
www.aznewspress.com

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Message

From: Frank Del Corso [/O=FIRST ORGANIZATION/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FDL@CORSO]
Sent: 8/6/2015 12:02:20 PM
To: Melanie Nisslin [/O=First Organization/OU=Exchange Administrative Group (FYDIBOHF23SPDLT)/CN=Recipients/cn=melanie.nisslin]
Subject: RE: Arizona New Flavor Fruit Drink Label Issues

I did



Frank Del Corso
Director of Product Development
23 Fairview Street
Edison, NJ 08820
Tel: 908.501.5005 ext 123
Fax: 908.501.4169
Email: frank.delcorso@newflavor.com
Web: www.newflavor.com



Please consider the environment before printing this e-mail.

From: Melanie Nisslin
Sent: Wednesday, August 05, 2015 4:41 PM
To: Frank Del Corso
Subject: RE: Arizona New Flavor Fruit Drink Label Issues

Did you let him know we prefer he leave that out?



Melanie Nisslin
Director of Customer Service
23 Fairview Street
Edison, NJ 08820
Tel: 908.501.5005 ext 119
Fax: 908.501.4169
Email: melanie.nisslin@newflavor.com
Web: www.newflavor.com



Please consider the environment before printing this e-mail.

From: Frank Del Corso
Sent: Wednesday, August 05, 2015 4:21 PM
To: Melanie Nisslin
Subject: FW: Arizona New Flavor Fruit Drink Label Issues

Here you go...

Case 1:19-cv-07081-AT-OTW Document 283-4 Filed 12/07/23 Page 2 of 5



Frank Del Corso
Director of Product Development
AIF
123
123
Email: frank@allenflavors.com
Web: www.allenflavors.com

Please consider the environment before printing this e-mail.

From: Jim Dar [mailto:jdar@drinkarizona.com]
Sent: Wednesday, August 05, 2015 10:26 AM
To: Frank Del Corso
Cc: David Kaplan; Susan Halsted; Bruce Weber
Subject: RE: Arizona New Flavor Fruit Drink Label Issues

Hi Frank

It is nice and understanding write up.

Please see attached where I have added a statement to back up our claim of using small quantity of Sodium Benzoate and Potassium Sorbate is ineffective as preservatives.

We may keep this statement or remove it and go with what you have.

Let me know what we want to do.

Regards

Jim

From: Frank Del Corso [mailto:frank@allenflavors.com]
Sent: Wednesday, August 05, 2015 9:55 AM
To: Jim Dar
Cc: David Kaplan; Susan Halsted; Bruce Weber
Subject: RE: Arizona New Flavor Fruit Drink Label Issues

Jim,

Attached is our response to [redacted] not sure if you want to add your name and header to this so I left it blank.



Frank Del Corso
Director of Product Development
AIF
123
123
Email: frank@allenflavors.com
Web: www.allenflavors.com

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Case 1:19-cv-07081-AT-OTW Document 283-4 Filed 12/07/23 Page 3 of 5

From: Jim Dar [mailto:ldar@drinkarizona.com]
Sent: Tuesday, August 04, 2015 12:42 PM
To: Frank Del Corso
Cc: David Kaplan; Susan Halsted; Bruce Weber
Subject: RE: Arizona New Flavor Fruit Drink Label Issues

I need to let you all know that we should say that the label printing was mixed up with the labels of another customer, OR some other description of similar type. Also check the Specification sheets for each and remove preservatives from it. I can send those as to what is actually in the base.

Regards

Jim

From: Frank Del Corso [mailto:frank@alienflavors.com]
Sent: Tuesday, August 04, 2015 12:14 PM
To: Jim Dar
Cc: David Kaplan; Susan Halsted; Bruce Weber
Subject: RE: Arizona New Flavor Fruit Drink Label Issues

Jim,

We're figuring out our response and will get back to you later today.



Frank Del Corso
Director of Product Development
22 Pioneer Street
Eugene, OR 97401
Tel: 541.325.5995 ext. 123
Fax: 541.325.4164
Email: frank@alienflavors.com
Web: www.alienflavors.com

Please consider the environment before printing this e-mail.

From: Jim Dar [mailto:ldar@drinkarizona.com]
Sent: Tuesday, August 04, 2015 11:36 AM
To: David Kaplan; Bruce Weber; Al Handel; Nick Tambone; Frank Del Corso; Melanie Fissim
Cc: Ira Steinberg; Susan Halsted
Subject: FW: Arizona New Flavor Fruit Drink Label Issues
Importance: High

FW:.....

I need to reply.

In future please remove these from the label.

Regards

Jim

From: Mervyn [mailto:Mervyn@arizona.com]
Sent: Monday, August 03, 2015 3:17 PM

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

AT 10002005

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To: Jim Dar
Cc: Hafe, Greg; Jay Petraghian
Subject: FW: Arizona New Flavor Fruit Drink Label Issues
Importance: High

Hi Jim, would you please review the comments below and advise how to resolve. Thanks in advance,
--Mervyn

From: C. [redacted], John
Sent: Monday, August 03, 2015 9:43 AM
To: D. [redacted], Mervyn <[redacted]>
Cc: Wilkinson, Sue <[redacted]>
Subject: Arizona New Flavor Fruit Drink Label Issues
Importance: High

Mervyn,
As we discussed, Sue and I were reviewing the documentation in regard to the new bases for the 3.0 oz/gallon Arizona Fruit Drinks and discovered the following discrepancies:

The bases have listed several ingredients that are not listed on the label ...

- Kiwi Strawberry Fruit Juice Cocktail
 - 1) Fruit Juice for color
 - 2) Glycerol ester of wood rosin
 - 3) Potassium Sorbate
 - 4) Sodium benzoate
- Orangeade Fruit Juice Cocktail
 - 1) Sugar
 - 2) Glycerol ester of wood rosin
 - 3) Potassium Sorbate
- Grapeade Fruit Juice cocktail
 - 1) Fruit Juice for color
 - 2) Caramel color

These labels and cartons also state 100% natural, No Preservatives, No Artificial color, No artificial flavor

From our understanding, the base ingredients:

- 1) must be on the label
- 2) the preservatives would not be allowed regardless of the level in the finished product to meet the No preservative claim

John P. [redacted]
Manager of Technical Specifications
E-mail: [redacted]
Ph: [redacted]
[redacted]
53 East [redacted] St.
Bryn Mawr, PA 19007

Case 1:19-cv-07081-AT-OTW Document 203-4 Filed 12/07/23 Page 5 of 5

Allen Flavors, Inc.
One Allen Plaza, 300 Westbury, NY 11591
www.allenflavors.com

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AT 10002007

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Stevens & Lee

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(201) 867-6760
www.stevenslee.com

Direct Dial: (201) 867-6762
Email: John.vlsconl@stevenslee.com
Direct Fax: (610) 371-8601

November 21, 2023

VIA EMAIL AND FEDERAL EXPRESS

Carlos R. Ramirez, Esq.
Reese LLP
100 West 93rd Street, 16th Floor
New York, New York 10025

VIA EMAIL

Melissa S. Weiner, Esq.
Pearson, Simon & Warshaw, LLP
350 Sansome Street, Suite 680
San Francisco, California 94104

Re: Ahmed Ashour et al. v. Arizona Beverages USA LLC, et al.
Index No. 19-cv-07081 (AT)(OTW)
Supplemental Document Production

Dear Counsel:

Please see the enclosed encrypted link to DBSI 062692 through DBSI 064266. These documents are being produced as "Highly Confidential -- Attorneys' Eyes Only." We will follow up with a subsequent letter identifying the specific document request numbers that correspond to each document produced.

In connection with the Joint Status Letter to the Court, dated October 6, 2023, and after Plaintiffs provided two "Missing Strings" of emails on October 5, 2023, Defendants investigated: (1) whether any responsive emails were inadvertently not collected or produced; (2) why this may have occurred; and (3) the scope of any inadvertent omissions. The enclosed production includes the "Missing Strings" identified by Plaintiffs. Those documents can be found at DBSI 063282-063310.

The original and expanded email searches were conducted on the client's Microsoft 365 Exchange Journal Archive, but not on each individual custodian's separate mailbox archive. This was an inadvertent oversight, of which we were not aware until conducting a search for the missing email strings. As detailed herein, that search has now occurred.

All emails archived in an individual user's mailbox should have also been archived in the 365 Exchange Journal Archive. However, during the search for missing emails, we learned that there were some responsive emails in the individual users' mailbox archives, that appear not to be in the Microsoft 365 Exchange Journal Archive.

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Stevens & Lee

Carlos F. Ramirez, Esq.
Melissa S Weiner, Esq.
November 21, 2023
Page 2

As a result of this discovery, Arizona undertook a search of each of the identified custodians' individual mailbox archives and re-searched the 365 Exchange Journal Archive using the expanded search terms agreed upon by the parties. We uploaded all documents containing hits to the expanded search terms into DISCO, our document review platform. Approximately 90% of the hits were found to be exact duplicates of documents previously reviewed. We conducted a search of the remaining "new" documents. Many constituted 100% duplicates of previously reviewed documents, but since they were not deemed to be "exact" duplicates, they were not automatically de-duped at ingestion. After conducting the review, we have identified 280 documents that are responsive and not privileged. Approximately 80 of the 280 documents are exact or near duplicates of documents already produced. We are producing them, however, out of an abundance of caution.

Thank you for your time and attention to this matter.

Very truly yours,

STEVENS & LEE

s/John N. Visconti
John N. Visconti

JNV